IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 353 of 1997

IN

SPECIAL CIVIL APPLICATION No. 3607 of 1982

with

CIVIL APPLICATION NO. 3445 OF 1997

WITH

CIVIL APPLICATION NO. 3446 OF 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SUPERINTENDING ENGINEER

Versus

V K MOHMED

Appearance:

MR DA BAMBHANIA for Appellants/Petitioners

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.S.SHAH

Date of decision: 22/04/97

ORAL JUDGEMENT (Per Patel, J.)

The appellants, original respondents, have preferred this appeal against the judgment and order passed by learned Single Judge (Coram: H.L. Gokhale, J.) on 30.1.1996 in Spl. C.A. No. 3607 of 1982.

2. There is a delay of 365 days (according to learned Assistant Government Pleader) in preferring the above appeal. Hence, Civil Application No. 3445/97 is filed praying for condonation of delay.

3. Civil Application No. 3446/97 is also filed by the appellants, praying for stay of the implementation, execution and operation of the aforesaid judgment.

4. We have heard Mr. Bambhania, learned Assistant Government Pleader at length not only in the Civil Application for condonation of delay, but also on the merits of the case.

5. Dealing first with the delay condonation application, we have noted the submission of the learned A.G.P. that there is a delay of 365 days in preferring the appeal. When we put a question to the learned A.G.P. as to why there is such delay in filing the appeal, learned A.G.P. submitted that an opinion was received that it is not a fit case to prefer appeal against the impugned judgment. However, the Department instructed the concerned Superintending Engineer to make submission after studying the case of each workman concerned, and even till today, the said information is not received. It is stated in the application that the impugned judgment was ready for delivery on 14.3.1996 and the Government Pleader's office forwarded the papers to the Legal Department on 15.3.1996. The Legal Department sent the papers to the applicant No.2 on 31.7.1996. There is no explanation at all as to what happened between 15.3.1996 to 31.7.1996, and nothing is indicated in the affidavit as to who is responsible for causing delay at that juncture. It is further averred in the application that the applicant No.2 asked for a report from the applicant No. 1 on 20.8.1996 and the report was submitted by the applicant No. 1 on 31.8.96 and the concerned Branch of the applicant No.2 studied the report and submitted its note on 7.9.1996. After studying the report, the concerned Under Secretary found that the most important issue, i.e. whether the workmen involved in the litigation are still daily wagers or have been

regularised on work-charge establishment, is not furnished, and, therefore, on 13.9.1996, he ordered to collect the said information from the applicant No.1. This speaks volumes about the working of the Department. As the required information was not forthcoming, another round of correspondence started, and ultimately only on 4.2.1997 the concerned Superintending Engineer gave information that the second group of 638 workmen have never been regularised as workcharge employees.

6. From the way in which this matter is dealt with by the Department concerned, it appears that the concerned Superintending Engineer and the Deputy Secretary have not taken action in the matter in time. We are not satisfied about the manner in which the delay is explained. We are sorry to say that there is nothing to explain delay. Hence, we are not inclined to allow the application for condoning delay.

7. Coming to the merits of the case, we find that the concerned persons had joined prior to 1982, and on the date of the judgment, they have completed more than 14 years in service. Learned A.G.P. placed reliance on the decision of the Apex Court reported in JT 1996 (10) SC 876 in the case of STATE OF HARYANA & ORS VS. JASMER SINGH & ORS. We are of the view that this case has no relevance in the instant case in view of the fact that the persons here are working since 14 years continuously. The Apex Court, in the case of STATE OF HARYANA VS. PIARA SINGH reported in AIR 1992 SC 2130, has held as under (in paragraph 25 at page 2151):-

> "So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell -say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court, security of tenure is necessary for an employee to give his best to the job. ... .. "

8. It appears that in view of what is observed by the Apex Court, the learned Single Judge has rightly given the directions to the concerned respondents to grant benefit from 1st January 1995 onwards as may be permissible under the relevant rules and resolutions. If it was a case that the benefit is required to be extended from retrospective effect, i.e. from the date of their joining service, the matter would have been different. In the instant case, the persons have been working for more than 14 years, and, therefore, they were only requesting that they may be extended the same benefit which are being extended to others. If the State had taken care by examining the records as observed by the Apex Court and thereafter placed before the Court the necessary materials to indicate as to how many persons are entitled to the benefit and how many are not entitled to the benefit, the matter would have been different. Learned counsel for the State could not point out whether the State has carried out this exercise or not.

9. In the result, C.A. No. 3445/97 for condonation of delay stands rejected. Resultantly, LPA No. 353/97 stands dismissed not only on account of refusal to condone delay, but also on merit. C.A. No. 3446/97 does not survive, and stands disposed of accordingly.

csm./ ----------